

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

WAYNE RAMJOHN

Debtor

X

IN PROCEEDINGS UNDER
CHAPTER 11

CASE NO. 15-10388-JLG

X

**DEBTOR'S MOTION SEEKING PERMISSION TO SELL REAL PROPERTY
LOCATED AT 741 WHITTIER STREET, BRONX, NY FREE AND CLEAR OF LIENS
AND ENCUMBRANCES**

PLEASE TAKE NOTICE, that upon the annexed affirmation and affidavit of Wayne Ramjohn upon all the prior pleadings, the undersigned will move this court, on June 11, 2019 at 11:00A.M. before Hon. James L. Garrity, Courtroom 601, United States Bankruptcy Court, Southern District of New York, One Bowling Green, New York, New York 10004 , for an order granting permission to sell real property free and clear of liens and encumbrances and for such other and further relief as this Court deems just and equitable under the circumstances.

PLEASE TAKE FURTHER NOTICE, that objections , if any, must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be (i) delivered to the chambers of the assigned Bankruptcy Judge, (ii) filed with the Bankruptcy Court and (iii) served upon Narissa A. Joseph, Esq, 305 Broadway, Suite 1001, New York, New York 10007 so as to be received no later at least two (2) days prior to the return date of this motion.

Dated: New York, New York
June 2, 2019

/s/ Narissa A. Joseph, Esq
By: Narissa A. Joseph
Attorneys for Debtor
Law Office of Narissa A. Joseph
305 Broadway, Suite 1001
New York, New York 10007
Tel: (212) 233-3060
Fax: (646) 607-3335

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE:

WAYNE RAMJOHN

Debtor

X

IN PROCEEDINGS UNDER
CHAPTER 11

CASE NO. 1-15-10388-JLG

**AFFIRMATION IN
SUPPORT**

X

Narissa A. Joseph, an attorney duly admitted to practice law in the Courts of the State of New York, affirms the following under penalties of perjury:

1. I am the attorney for the debtor herein and as such am fully familiar with the facts and circumstances of this case.
2. The Court has jurisdiction over this motion pursuant to 28 U.S.C. Section 157 and 1334.
3. This is a core proceeding pursuant to 28 U.S.C. Section 157.
4. The statutory predicate to the relief requested is 11 U.S.C. section 363.

Background

5. On February 23, 2015, Wayne Ramjohn (the "Debtor") filed a petition for Chapter 13 Bankruptcy. The Debtor's case was converted to Chapter 11 on March 17, 2019.
6. On April 24, 2019, the Debtor filed a Plan calling for the sale of the Debtor's property located at 741 Whittier Street, Bronx, NY as a means of implementing said Plan.
7. The Debtor does not have a mortgage on the Property.
8. The Debtor requests permission to sell the Property.

9. The Purchaser is a good faith purchaser and is not related to the Debtor. The purchase price was determined based on arms length negotiation and the buyer and the Debtor wish to close as soon as possible.

10. The Debtor believes that the sale is fair and reasonable and is in the best interest of the estate. The Debtor respectfully requests that this Court enter into an order approving the sale to Purchaser.

11. Because the sale is an arms length transaction, it is requested that the Debtor not be required to advertise or otherwise notice the sale pursuant to Bankruptcy Rule 2002.

18. It is respectfully requested that the Court approve the sale of the Debtor's property free of liens and encumbrances.

19. It is further requested that at the time of the sale that the standard closings costs be paid. This includes taxes, real estate attorney and other standard costs.

WHEREFORE, it is respectfully requested that the Court grant the debtor's motion for permission to sell the property free and clear of liens and encumbrances, the standard closing costs be paid at closing and for such other relief deems proper.

Dated: New York, New York

June 2, 2019

/s/ Narissa A. Joseph, Esq
By: Narissa A. Joseph
Attorneys for Debtor
Law Office of Narissa A. Joseph
305 Broadway, Suite 1001
New York, New York 10007
Tel: (212) 233-3060
Fax: (646) 607-3335

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE: _____ X

WAYNE RAMJOHN

Debtor

IN PROCEEDINGS UNDER
CHAPTER 11

CASE NO. 15-10388-JLG

AFFIDAVIT

STATE OF NEW YORK
COUNTY OF NEW YORK ss. _____ X

Wayne Ramjohn, being duly sworn deposes and states the following under penalty of perjury:

1. I am sole owner of the real property located at 741 Whittler Street, Bronx, NY 10474 (the "Property").
2. I filed the herein Bankruptcy on February 23, 2016.
3. My proposed Plan of Reorganization calls for the sale of the premises located at 741 Whittler Street, Bronx, NY 10474.
4. The house has violations and it was very difficult to find a Purchaser willing to take the Property subject to the violations.
5. I found this Purchaser after I placed a For Sale Sign on the Premises. The Purchaser and I negotiated to the terms of the attached Contract of Sale (Exhibit A). He is a developer who is paying cash and allowing me to use the closing proceeds to cure the violations after the closing.
6. I have no connection to the Purchaser.

7. WHEREFORE, it is respectfully requested that the Court grant the debtor's motion for permission to sell the property free and clear of liens and encumbrances; that standard closing costs be paid at closing; and for such other relief deems proper.

Dated: New York, New York
June 2, 2019

/s/ Wayne Ramjohn

Wayne Ramjohn

Sworn to before me this
2nd Day of June, 2019
/s/ Narissa A. Joseph
Notary Public
Narissa A. Joseph
Notary Public- State of New York
No: 02J0610080
Qualified in Kings County
Commission Expires October 14, 2019

EXHIBIT A

A-125-Residential contract of sale, 11-2006

Jointly prepared by the Real Property Section of the New York State Bar Association, the New York State Land Title Association, the Committee on Real Property Law of the Association of the Bar of the City of New York and the Committee on Real Property Law of the New York County Lawyers' Association.

**WARNING: NO REPRESENTATION IS MADE THAT THIS FORM OF CONTRACT FOR THE SALE AND PURCHASE OF REAL ESTATE COM-
PLIES WITH SECTION 5-402 OF THE GENERAL OBLIGATIONS LAW ("PLAIN LANGUAGE").**

CONSUME YOUR LAWYER BEFORE SIGNING THIS AGREEMENT

NOTE: FIRE AND CASUALTY LOSSES AND CONDEMNATION.

This contract form does not provide for what happens in the event of fire, or other casualty loss or condemnation before the title closing. Unless different provision is made in this contract, Section 5-1311 of the General Obligations Law will apply. One part of that law makes a Purchaser responsible for fire and casualty loss open-
ing possession of the Premises before the title closing.

Residential Contract of Sale

Contract of Sale

made as of

May

2019

BETWEEN

WAYNE RAMFORD

Address: 1103 East 213th Street

, Bronx

, NY

10469

Social Security Number/Fed. I.D. No(s):

hereinafter called "Seller" and

1 ROSE REALTY LLC

Address: 521 Fort Lee Road

, Lenox

, NY

07603

Social Security Number/Fed. I.D. No(s):

hereinafter called "Purchaser",

The parties hereby agree as follows

1. **Premises.** Seller shall sell and convey and Purchaser shall purchase the property, together with all buildings and improvements thereon (collectively the "Premises"), more fully described on a separate page attached "Schedule A", annexed hereto and made a part hereof and also located at:

Street Address: 1103 East 213th Street, Bronx, New York 10469

Tax Map Designation: Block: 2763, Section: 19, Lot: 332

Together with Seller's ownership and rights, if any, in and along with the lot of any street or highway, shown as proposed, adjoining the Premises in the annex (see thereon), including any right of Seller in any unpaid award by reason of any taking by condemnation action for any damage to the Premises by reason of change of grade of any street or highway. Seller shall deliver at no additional cost to Purchaser, at Closing (as hereinafter defined), or thereafter, on demand, any documents that Purchaser may reasonably require for the conveyance of such title and the assignment and collection of such award or damages.

2. **Personal Property.** This sale also includes all fixtures and articles of personal property now situated on or appurtenant to the Premises, unless specifically excluded below. Seller represents and warrants that at Closing they will be paid for and owned by Seller, free and clear of all liens and encumbrances, except any existing mortgage to which this sale may be subject. They include, but are not limited to, plumbing, heating, lighting and cooling fixtures, chandeliers, built-in and kitchen cabinets and counters, mirrors, floor mirrors, built-in glass and door hardware, window blinds, window treatments, shades, awnings, screens, storm windows, storm doors, window boxes, mail box, TV sets, washer, dryer, refrigerator, pump, shrubbery, fencing, outdoor furniture, hot tub, dishwasher, washing machine, clothes dryer, garbage disposal unit, range, oven, built-in microwave oven, refrigerator, freezer, air conditioning equipment and installations, well to well pumping and built-in not excluded below (see annexed Schedule A).

Excluded from this sale are fixtures and household furnishings and

3. **Purchase Price.** The purchase price is \$ 800,000.00 payable as follows:

(a) at the signing of this contract, by Purchaser's good check payable to the Payee(s) (as hereinafter defined), subject to collection, the receipt or return is hereby acknowledged, to be held in escrow pursuant to paragraph 6 of this contract (the "Downpayment"): \$ 25,000.00

(b) by allowance for the principal amount repaid on the existing mortgage on the date hereof, payment of which Purchaser shall assume by interest in the deed: \$ 0.00

(c) by a purchase money note and mortgage from Purchaser to Seller: \$ 0.00

Balance at Closing is accordance with paragraph 7) \$ 475,000.00

4. **Existing Mortgage.** (If any of the following is the case to extent of an existing mortgage as indicated in paragraph 5(b) above:

(a) The Premises shall be conveyed subject to the existing first mortgage, which is presently payable, with interest at the rate of _____ percent per annum, to maturity on _____ which includes principal, interest and escrow amounts, if any, and with any balance of principal being due and payable on _____

(b) To the extent that any required payments are made on the existing mortgage between the date hereof and Closing, which reduce the unpaid principal amount thereof below the amount shown in paragraph 5(b), then the balance of the price payable at Closing under paragraph 3(c) shall be increased by the amount of the payments of principal. Seller represents and warrants that the amount shown in paragraph 3(c) is sufficient to satisfy and release the only payments required by the existing mortgage will be made between the date hereof and Closing.

2

payment of any outstanding debt, or financial distress change in Purchaser's financial condition or any other circumstances, the change events the right that such conditions may not be waived, a condition precedent to the Institutional Lender's approval of an application shall not be deemed a Commitment hereunder until an agreement is approved (and if that does not occur before the Commitment Date, Purchaser may proceed under sub-paragraph 8(c) unless the Commitment Date is extended). Purchaser's obligations hereunder are not contingent only on issuance of a Commitment. Once a Commitment is issued, Purchaser is bound under this contract even if the Lender fails or refuses to fund the loan for any reason.

(d) Purchaser shall (i) make prompt application to and (ii) at Purchaser's election, once then was Institutional Lender for each mortgage loan; (iii) furnish accurate and complete information regarding Purchaser and members of Purchaser's family, as required, fill out all first, second and charges required in connection with such application and loan; (iv) present such application with diligence; and (v) cooperate in good faith with such Institutional Lender(s) to obtain a Commitment. Purchaser shall execute a Commitment regarding the same set forth in sub-paragraph 8(c) and shall comply with all requirements of such Commitment (or any other commitment accepted by Purchaser). Purchaser shall furnish Seller with a copy of the Commitment promptly after receipt thereof.

(e) ~~Unless this sub-paragraph is inapplicable~~ Prompt submission by Purchaser of an application to a mortgage lender registered pursuant to Article 12-B of the New York Banking Law (Mortgage Lender) shall constitute full compliance with the terms and conditions set forth in sub-paragraph 8(b)(i), provided that such Mortgage Lender promptly submits such application to such Institutional Lender(s). Purchaser shall cooperate in good faith with such Mortgage Lender to obtain a Commitment from such Institutional Lender(s).

(f) If all Institutional Lenders to whom applications were made they each application is pending prior to the Commitment Date, Purchaser may extend this contract by giving Notice to Seller with a copy of such details, provided that Purchaser has complied with all its obligations under this paragraph 8.

(g) If an Institutional Lender to whom an Institutional Lender or holder the Commitment Date from, unless Purchaser has complied with the terms set forth in sub-paragraph 8(a), Purchaser may extend this contract by giving Notice to Seller within 5 Business Days after the Commitment Date, provided that such Notice includes the name and address of the Institutional Lender(s) to whom application was made and that Purchaser has complied with all its obligations under this paragraph 8.

(h) If this contract is extended by Purchaser pursuant to sub-paragraph 8(f) or (g), neither party shall thereafter have any further rights, claims, or obligations or liabilities to, or by reason of this contract, except that the Obligations shall be promptly extended to the status and except to set forth in paragraph 27.

(i) If Purchaser fails to give timely Notice of cancellation or if Purchaser attempts a written commitment from an Institutional Lender that does not conform to the terms set forth in sub-paragraph 8(a), then Purchaser shall be deemed to have waived Purchaser's right to extend this contract and to extend or extend of the Delay Payment by reason of the continuing agreement in this paragraph 8.

(j) If Seller has not received a copy of a commitment from an Institutional Lender accepted by Purchaser by the Commitment Date, Seller may extend this contract by giving Notice to Purchaser within 3 Business Days after the Commitment Date, which extension shall be deemed effective unless Purchaser delivers a copy of such commitment to Seller within 10 Business Days after the Commitment Date. After such extension is made, any party shall have any further rights, claims, or obligations or liabilities to, or by reason of this contract, except that the Delay Payment shall be promptly extended to Purchaser (provided Purchaser has complied with all its obligations under this paragraph 8) and except to set forth in paragraph 27.

(k) For purposes of this contract, the term "Institutional Lender" shall mean any bank, savings bank, private banker, trust company, savings and loan association, credit union or similar lending institution authorized to conduct business under the laws of the United States or any

other state, foreign banking corporation licensed by the Superintendent of Banks of New York or regulated by the Comptroller of the Currency to transact business in New York State, or any company duly organized or licensed to do business in New York State, mortgage lender licensed pursuant to Article 12-B of the Banking Law, and any institution regulated by the United States or any state with the power to make mortgage loans.

(l) For purposes of sub-paragraph 8(c), Purchaser shall be deemed to have been given a copy of this contract on the first business day following the date of delivery or regular mailing, postage prepaid.

9. Permitted Exceptions. The Premises set forth and shall be conveyed subject to:

(a) Zoning and subdivision laws and regulations, and easements, interests or well-known designations, provided that they are not violated by the existing buildings and improvements located on the property or their use;

(b) Consents for the erection of any structures on, under or above any structure on which the Premises abut;

(c) Encroachments of streets, roads, utility strips, utility easements, if any, upon any street or highway; *not to exceed 12'*

(d) Real estate taxes that are a lien, but are not yet due and payable; and

(e) The other matters, if any, including a survey exception, set forth in a Rider attached.

10. Governmental Violations and Orders. (a) Seller shall comply with all orders or notices of violations of law or municipal ordinances, orders or requirements issued or issued as of the Closing Date by any governmental department having authority as to health, housing, buildings, fire, health, environmental and other conditions affecting the Premises. The Premises shall be conveyed free of liens at Closing. Seller shall furnish Purchaser with any authorizations necessary to make the payment that could satisfy these statutes.

(b) ~~Unless it is inapplicable~~ All obligations affecting the Premises pursuant to the Administrative Code of the City of New York, incurred prior to Closing and payable in money shall be discharged by Seller at or prior to Closing.

11. Seller's Representations. (a) Seller represents and warrants to Purchaser that:

(i) The Premises abut or have a right of access to a public road;

(ii) Seller is the sole owner of the Premises and has the full right, power and authority to sell, convey and transfer the same in accordance with the terms of this contract;

(iii) Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code ("FIRPTA") Section 1445, as amended, and the regulations promulgated thereunder (collectively "FIRPTA");

(iv) The Premises are not affected by any encumbrances or statements of taxes; and

(v) Seller has been insured by an other name for the past ten years, except:

(b) Seller covenants and warrants that all of the representations and warranties set forth in this contract shall be true and correct at Closing.

(c) Except as otherwise expressly set forth in this contract, none of Seller's covenants, representations, warranties or other obligations contained in this contract shall survive Closing.

12. Condition of Property. Purchaser acknowledges and represents that Purchaser is fully aware of the physical condition and state of repair of the Premises and of all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this contract based solely upon such inspection and investigation and not upon any information, data, statements or representations, written or oral, as to the physical condition, state of

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 "Handwritten the same do not render file"
 "im-modifiable"

Handwritten:
 "closing"

repair, use, cost of operation or any other matter related to the Premises or the other property included in the sale, given or made by Seller or its representatives, and shall accept the same "as is" in their present condition and state of repair, subject to reasonable use, wear, tear and natural deterioration between the date hereof and the date of Closing (except as otherwise set forth in paragraph 14(c)), without any reduction in the purchase price or claim of any kind for any change in such condition by reason thereof subsequent to the date of this contract. Seller and its authorized representatives shall have the right, at reasonable times and upon reasonable notice (by telephone or otherwise) to inspect the Premises before Closing.

13. **Insurable Title.** Seller shall give and Purchaser shall accept such title as: Any NYS Licensed Real Estate Title Company

shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the extent provided for in this contract.

14. **Closing, Deed and Title.** (a) "Closing" means the settlement of the obligations of Seller and Purchaser to each other under this contract, including the payment of the purchase price to Seller, and the delivery to Purchaser of a

Deed and Sale Deed with Covenants vs. Corporate Act
shall to proper attorney draft them the recording, duly executed and acknowledged, so as to convey to Purchaser the simple title to the Premises, free of all encumbrances, except as otherwise herein stated. The deed shall contain a covenant by Seller as required by subd. 3 of Section 15 of the Lien Law.

(b) If Seller is a corporation, it shall deliver to Purchaser at the time of Closing (i) a resolution of its Board of Directors authorizing the sale and delivery of the deed, and (ii) a certificate by the Secretary or Assistant Secretary of the corporation verifying such resolution and setting forth facts showing that the transfer is in conformity with the requirements of Section 909 of the Business Corporation Law. The deed in such case shall contain a recital sufficient to establish compliance with that Section.

15. **Closing Date and Place.** Closing shall take place at the office of: **Marlin A. Gordon, P.C. 34 Cedar Hill Road, Great Neck, NY 11021**

at 10 o'clock on June 14, 2018, or, upon reasonable notice (by telephone or otherwise) by Purchaser, at the office of

Marlin A. Gordon, P.C. 34 Cedar Hill Road, Great Neck, NY 11021

16. **Conditions to Closing.** This contract and Purchaser's obligation to purchase the Premises are also subject to and conditioned upon the fulfillment of the following conditions precedent:

(a) The accuracy, as of the date of Closing, of the representations and warranties of Seller made in this contract.

(b) The delivery by Seller to Purchaser of a valid and subsisting Certificate of Occupancy or other required certificate of occupancy, or evidence that same was required, covering the building(s) and all of the other improvements located on the property enclosing their use as a **3** **family dwelling at the date of Closing.**

(c) The delivery by Seller to Purchaser of a certificate stating that Seller is not a foreign person, which certificate shall be in the form first required by FIRPTA or a withholding certificate from the IRS. If Seller fails to deliver the above certificate or if Purchaser is not satisfied under FIRPTA to rely on such certificate, Purchaser shall deduct and withhold from the purchase price a sum equal to 10% thereof (or any lesser amount permitted by law) and shall at Closing remit the withheld amount with the required forms to the Internal Revenue Service.

(d) The delivery of the Premises and all building(s) and improvements comprising a part thereof in broom clean condition, vacant and free of tenants or occupants, together with keys to the Premises.

(e) All plumbing (including water supply and septic systems, if

any), heating and air conditioning, if any, electrical and mechanical systems, equipment and machinery in the building(s) located on the property and all appliances which are included in this sale being in working order as of the date of Closing.

(f) If the Premises are a new or less than one year old, delivery by the parties at Closing of affidavits in compliance with state and local law requirements to the effect that there is installed in the Premises a smoke detecting alarm device or devices.

(g) The delivery by the parties of any other affidavits required as a condition of recording the deed.

17. **Deed Transfer and Recording Taxes.** At Closing, certified or official bank checks payable to the order of the appropriate State, City or County officer in the amount of any applicable transfer and/or recording tax payable by reason of the delivery or recording of the deed or mortgage, if any, shall be delivered by the party required by law or by this contract to pay such transfer and/or recording tax, together with any required tax returns duly executed and sworn to, and each party shall cause any such checks and returns to be delivered to the appropriate officer promptly after Closing. The obligation to pay any additional tax or deficiency and any interest or penalties therein shall survive Closing.

18. **Appropriations and Other Adjustments; Water Meter and Installation Assessments.** (a) To the extent applicable, the following shall be apportioned as of midnight of the day before the day of Closing:

(i) taxes, water charges and sewer rents, on the basis of the fiscal period for which assessed; (ii) fuel; (iii) interest on the existing mortgage; (iv) premiums on existing transferable insurance policies and reserves of those expiring prior to Closing; (v) water charges; (vi) taxes as and when indicated.

(b) If Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the tax rate for the immediately preceding fiscal period applied to the latest assessed valuation.

(c) If there is a water meter on the Premises, Seller shall furnish a reading to a date not more than 30 days before Closing and the agreed water charge and sewer rent, if any, shall be apportioned on the basis of such last reading.

(d) If at the date of Closing the Premises are affected by an assessment which is or may become payable in installments, and the first installment is then a lien, or has been paid, then for the purposes of this contract all the unpaid installments shall be considered due and shall be paid by Seller at or prior to Closing.

(e) Any errors or omissions in computing appropriations or other adjustments at Closing shall be corrected within a reasonable time following Closing. This subparagraph shall survive Closing.

19. **Allowance for Unpaid Taxes, etc.** Seller has the option to credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges and sewer rents, together with any interest and penalties therein to a date not less than five business days after Closing, provided that official bills therefor compared to said date are produced at Closing.

20. **Use or Purchase Prior to Remove Encumbrances.** If at Closing there are other liens or encumbrances that Seller is obligated to pay or discharge, Seller may use any portion of the cash balance of the purchase price to pay or discharge them, provided Seller shall simultaneously deliver to Purchaser at Closing instruments in immediate form and sufficient to satisfy such liens or encumbrances of record, together with the cost of recording or filing said instruments. As an alternative to any such discharge, Seller may with the title insurance company employed by Purchaser, acceptable to and required by it to assure their discharge, but only if the title insurance company will insure Purchaser's title clear of the matters or issues against their enforcement out of the Premises and all issues Purchaser's institutional lender clear of such matters. Upon reasonable prior notice (by telephone or otherwise), Purchaser shall provide separate certified or official bank checks as requested to assist in clearing up their matters.

on or about thirty (30) days from the date upon which purchaser's earnest money is fully deposited into escrow

final water meter

21. **The Examination; Seller's Liability to Convey; Limitations of Liability.** (a) Purchaser shall order an examination of title in respect of the Premises from a title company licensed or authorized to issue title insurance by the New York State Insurance Department or any agent for such title company promptly after the execution of this contract or, if this contract is subject to the mortgage contingency set forth in paragraph 8, after a mortgage commitment has been accepted by Purchaser. Purchaser shall receive a copy of the title report and of any additional charges to be delivered to the attorney(s) for Seller promptly after receipt thereof.

(b)(i) If at the date of Closing Seller is unable to transfer title to Purchaser in accordance with this contract, or Purchaser has other valid grounds for refusing to close, whether by reason of liens, encumbrances or other objections to title or otherwise (whether collectively called "Defects"), other than those subject to which Purchaser is obligated to accept title hereunder or which Purchaser may have waived and other than those which Seller has herein expressly agreed to remove, remedy or discharge and if Purchaser shall be unwilling to waive the same and to close title without statement of the purchase price, then, except as hereinafter set forth, Seller shall have the right, at Seller's sole election, either to (a) take such action as Seller may deem advisable to remove, remedy, discharge or comply with such Defects or to amend this contract; (ii) If Seller elects to take action to remove, remedy or comply with such Defects, Seller shall be entitled from time to time, upon Notice to Purchaser, to adjourn the date for Closing hereunder for a period or periods not exceeding 60 days in the aggregate (but not commencing beyond the date upon which Purchaser's mortgage commitment, if any, shall expire), and the date for Closing shall be adjusted to a date specified by Seller not beyond such period. If for any reason whatsoever, Seller shall not have succeeded in removing, remedying or complying with such Defects at the expiration of such adjournment(s), and if Purchaser shall still be unwilling to waive the same and to close title without statement of the purchase price, then either party may cancel this contract by Notice to the other given within 15 days after such adjournment date; (iii) notwithstanding the foregoing, the existing mortgage (unless this act is subject to the same) and any liens against by Seller after the date hereof shall be returned, discharged or otherwise cured by Seller at or prior to Closing.

(c) If this contract is cancelled pursuant to its terms, other than as a result of Purchaser's default, this contract shall terminate and there is no refund, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, except that: (i) Seller shall promptly refund or cause the Escrowee to refund the Downpayment to Purchaser and, unless cancelled as a result of Purchaser's default or pursuant to paragraph 8, to reimburse Purchaser for the net cost of examination of title, including any appropriate additional charges related thereto, and the net cost, if actually paid or incurred by Purchaser, for updating the existing survey of the Premises or of a new survey, and (ii) the obligations under paragraph 27 shall survive the termination of this contract.

22. **Affidavit as to Judgments, Liens, Etc.** If a title examination discloses judgments, mortgages or other claims against persons having interests in the same or similar to that of Seller, Seller shall deliver an affidavit at Closing showing that they are not against Seller.

23. **Defects and Remedies.** (i) If Purchaser elects to purchase, Seller's sole remedy shall be to remove and retain the Downpayment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's default might be impossible to ascertain and that the Downpayment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

(ii) If Seller defaults hereunder, Purchaser shall have such remedies as Purchaser shall be entitled to at law or in equity, including, but not limited to, specific performance.

24. **Purchaser's Lien.** All money paid on account of this contract, and the reasonable expenses of transportation of title to the Premises and of any survey and survey imposition charges, are hereby made liens on the Premises, but such liens shall not continue after default by Purchaser under this contract.

25. **Notices.** Any notice or other communication ("Notice") shall be in writing and either (a) sent by either of the parties herein or by their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or

(b) delivered in person or by overnight courier, with receipt acknowledged, to the respective addresses given in this contract for the party and the Escrowee, to whom the Notice is to be given, or to such other address as such party or Escrowee shall hereafter designate by Notice given to the other party or parties and the Escrowee pursuant to this paragraph. Each Notice mailed shall be deemed given on the third business day following the date of mailing the same, except that any notice to Escrowee shall be deemed given only upon receipt by Escrowee and each Notice delivered in person or by overnight courier shall be deemed given when delivered, or

(c) with respect to (i) or (ii) sent by fax to the party's attorney. Each Notice by fax shall be deemed given upon transmission as confirmed by the sender's fax machine. A copy of each Notice sent to a party shall also be sent to the party's attorney. The attorneys for the parties are hereby authorized to give and receive on behalf of their clients all Notices and deliveries.

26. **No Assignment.** This contract may not be assigned by Purchaser without the prior written consent of Seller in each instance and any purported assignment(s) made without such consent shall be void.

27. **Broker.** Seller and Purchaser each represent and warrant to the other that it has not dealt with any broker in connection with this sale other than:

None

("Broker") and Seller shall pay further any commission payable pursuant to a separate agreement between Seller and Broker. Seller and Purchaser shall indemnify and defend each other against any costs, claims and expenses, including reasonable attorneys' fees, arising out of the breach on their respective parts of any representation or agreement set forth in this paragraph. The provisions of this paragraph shall survive Closing or, if Closing does not occur, the termination of this contract.

28. **Miscellaneous.** (a) All prior understandings, agreements, representations and warranties, oral or written, between Seller and Purchaser are merged in this contract; it completely expresses their full agreement and has been entered into after full investigation, neither party relying upon any statement made by anyone else that is not set forth in this contract.

(b) Neither this contract nor any provision thereof may be varied, changed or cancelled except in writing. This contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in state and time periods provided for in this contract.

(c) Any singular word or term herein shall also be read as in the plural and the reverse shall include the masculine and feminine gender, whenever the sense of this contract may require it.

(d) The captions in this contract are for convenience or reference only and in no way define, limit or describe the scope of this contract and shall not be considered in the interpretation of this contract or any provision hereof.

(e) This contract shall not be binding or effective until duly executed and delivered by Seller and Purchaser.

(f) Seller and Purchaser shall comply with NAC reporting requirements, if applicable. This subparagraph shall survive Closing.

(g) Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other in order to carry out the intent and purpose of this contract. This subparagraph shall survive Closing.

(h) This contract is intended by the parties to be the entire agreement between them, except as otherwise expressly provided herein, shall

not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

Continued on Rider attached hereto. *Delete (If Applicable)*

(i) If applicable, the complete and fully executed disclosure of information on the back of and prior to the first scheduled payment is to be included herewith and made a part hereof.

In witness whereof,

this contract has been duly executed by the parties hereto.

WAYNE RAMODES

Seller

ROSE REGENCY LLC

Purchaser

Seller

Purchaser

Attorney for Seller:

Minkin & Gordon, P.C. by: Arthur J. DiBenedetto, Esq.
Address: 78 Collier MTH Road Suite 310N

Great Neck, New York 11021

Tel.: 516-466-8030

Fax: 516-487-1560

Attorney for Purchaser:

Peter Fitzgerald, Esq.
Address: 583 Morris Park Avenue

Brooklyn, NY 10461

Tel.: 718-822-0707

Fax:

Receipt of the downpayment is acknowledged and the undersigned agrees to act in accordance with the provisions of paragraph 8 above.

Minkin & Gordon, P.C.

Executed

NOTES ON MORTGAGE COMMITMENT CONTINGENCY CLAUSE

for

RESIDENTIAL CONTRACT OF SALE

1. WAIVING the mortgage commitment contingency clause for the Residential Contract of Sale is a bar to litigation, from that clause, to provide a disclaimer that neither the rights nor obligations of the parties shall be affected by the inclusion of this contingency clause. It should be reviewed carefully by Seller and Purchaser and their attorneys in each and every transaction to make sure that all the provisions are appropriate for that transaction. Negotiated modifications should be made whenever necessary.

2. Under the clause, the obligation of Purchaser to purchase under the contract of sale is contingent on Purchaser's obtaining a mortgage commitment letter from an institutional lender within the number of days specified for the amount specified. This clause is intended to protect Seller's interest should the lender's decision be unfavorable. Seller's attorney should not be a condition of the Commitment Date in the letter delivering the executed contract to Purchaser's attorney, to prevent confusion later. Purchaser should promptly confirm to Seller this date. In applying for a loan, Purchaser should inform its lender of the scheduled date of closing in the contract and request that the expiration date of the commitment occur after the scheduled date of closing. Purchaser must comply with conditions and terms of the application in good faith. The commitment contingency is satisfied by issuance of a commitment in the amount specified on or before the Commitment Date, unless the commitment is conditioned on approval of an appraisal and such approval does not occur prior to the Commitment Date. Purchaser should give credit for the contract or obtain an extension of the Commitment Date. If the commitment is later withdrawn or not honored, Purchaser runs the risk of being in default under the contract of sale with Seller.

3. If there are loan terms and conditions that are required or would not be acceptable to Purchaser, such as the interest rate, terms of the loan, points, fees or a condition requiring sale of the current home, those terms and conditions should be specified in a note.

4. This clause assumes that initial review and approval of Purchaser's credit will occur before the commitment letter is issued. Purchaser should confirm with the lender that this is the case before applying for the commitment.

5. If it has been intended, the commitment letter itself is conditioned

on receipt of Purchaser's letter of payment of any outstanding debt to any financial institution. In Purchaser's financial institution, such a requirement will satisfy the commitment contingency condition, and Purchaser will take the risk of fulfilling those commitment conditions, including forfeiture of the downpayment if Purchaser defaults on its obligation to close. Under New York law, a defaulting purchaser may not receive any part of the downpayment, and Seller with the right to receive any damages. If Purchaser is not willing to take this risk, the clause must be modified accordingly.

6. Purchaser may submit an application to a requested mortgage lender instead of applying directly to an institutional lender.

7. This clause allows Seller to cancel the commitment if not accepted by Purchaser by the Commitment Date, unless Purchaser timely notifies a copy of the commitment, to allow Seller the option to avoid being bound to wait until the scheduled date of closing to find out if Purchaser will be able to close. Seller may prefer to cancel rather than to wait and retain the disclosure of the downpayment if Purchaser defaults. Because of Seller's right to cancel, Purchaser may not waive this contingency clause. This clause states that Purchaser is subject to cancellation by Seller even if Purchaser is willing to risk that Seller will obtain the commitment after the Commitment Date. Since Purchaser's duty not to wait to be subject to such cancellation by Seller.

8. Purchaser may want to add to paragraph 22 that Purchaser's term financing should include non-refundable financing and inspection expenses of Purchaser, which should be refunded by Seller if Seller voluntarily defaults under the contract of sale (alternative: if Seller is unable to transfer title under the contract of sale).



**RIDER TO CONTRACT OF SALE BETWEEN
WAYNE RAMJOHN, AS SELLER(S)
AND 1016 BEACH 19 STREET, LLC, AS PURCHASER(S)
PREMISES: 741 WHITTIER STREET, BRONX, NY 10474**

1. In the event that there is any ambiguity or conflict between the terms of the pre-printed Contract and this Rider, this Rider shall control and prevail.
2. Purchaser shall take the Premises in strictly "as is" condition inclusive of all personal property in and about the Premises.
3. Purchaser shall take the Premises in strictly "as is" condition without any representations, conditions warranties regarding any of the systems at the Premises including, but not limited to, the plumbing, electrical, mechanical, heating, cooling systems or as to any equipment, machinery or appliances or as to the condition, fitness or integrity of any structures including, but not limited to, the steps/stairs, roof, windows, basement, etc.
4. Purchaser shall take the Premises subject to any tenants, occupants or squatters as may be present at the Premises.
5. Seller shall cure all violations of record as of the date hereof. Purchaser agrees to close title subject to the violations on the condition that Seller's attorney shall hold \$185,000.00 of the sale proceeds in escrow to ensure that Seller cures said violations post-closing. Seller shall be entitled to use the escrowed funds to cure such violations and pay any costs/fines/penalties associated therewith. Requests to disburse said funds shall be presented to Purchaser's attorney and shall be accompanied by such information/documents as may be available to document said request. Said funds shall be disbursed upon receipt of Purchaser's attorney's consent which shall not be unreasonably withheld or delayed.

This provision shall survive closing of title.

6. An electronic copy of the Contract and Rider(s) may be treated as an original and may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile of ".pdf" signature page were an original thereof.

Seller



Purchaser

Seller

Purchaser

Manuscript J.T.22.24, from K100 : fragment of clay tablet with cuneiform script, from the Kassite period, 12th century BC.